

April 15, 1998  
**L-98-9**

TO : John L. Thoresdale  
Director of Policy and Systems

FROM : Steven A. Bartholow  
Deputy General Counsel

SUBJECT : Supplemental pension plans - Long Island Railroad and the Metro-North  
Commuter Railroad

This is in response to your memorandum of March 24, 1998, wherein you inquire as to whether certain pension plans are supplemental pension plans under section 2(h)(2) of the Railroad Retirement Act.

#### **LONG ISLAND RAILROAD COMPANY PENSION PLAN**

This is an amended version of a pension plan previously approved as a supplemental pension plan which covers all employees of the Long Island Railroad who were hired before January 1, 1988. The original plan was effective July 1, 1971. The plan is a defined benefit plan and was adopted in fulfillment of the company's collective bargaining agreements. It initially provided for both employer and employee contributions, but is funded solely by employer contributions after December 31, 1988. In our opinion, the amended plan continues to be a supplemental pension plan. See 20 CFR section 216.42

#### **LONG ISLAND RAILROAD COMPANY PLAN FOR ADDITIONAL PENSIONS**

This is a defined benefit plan which covers the same individuals who are covered by the Long Island Railroad Company Pension Plan. Article V, Section 1, requires employee contributions based upon a percentage of gross pay. Section 2 of that article provides that in lieu of that contribution the employer shall contribute the same amount through a subtraction against the employees' wages. We have previously indicated that contributions made in this manner are not to be treated as employer contributions for purposes of the reduction required by section 2(h)(2) of the Railroad Retirement Act. Consequently, no benefit paid under this plan would reduce a supplemental annuity.

With respect to the other plans referenced in your memorandum, we see no basis for modification of the legal opinions issued previously.